

EXHIBIT 14

1 HC06CRWR678189-GDH-cm
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FILED
JAN 11 2007

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

By _____ DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
9 CENTRAL DIVISION

10
11 In re) No. 06CRWR678189 Dept. 71
12 HECTOR HERNANDEZ,)
13 Petitioner) ORDER
14 On Habeas Corpus.)
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16 Having considered the petition for writ of habeas corpus
17 filed on December 18, 2006, the court finds that existing evidence
18 does not warrant the requested relief.

19 Petitioner challenges the Governor's reversal of the
20 Parole Board's decision to grant his parole. However, whether or
21 not this court agrees with the Governor's conclusion, his decision
22 may not be overturned so long as it is supported by "some
23 evidence." (See, e.g., *In re Fuentes* (2005) 135 Cal.App.4th 152,
24 *In re Shaputis* (2005) 135 Cal.App.4th 217, *In re Lowe* 16th Dist.
25 2005) 130 Cal.App.4th 1405, *Rosas v. Nielsen* (9th Cir. 2005) 428
26 F.3d 1229, *In re DeLuna* (2005) 126 Cal.App.4th 585, *In re Scott*
27 (2005) 119 Cal.App.4th 871, *In re Van Houten* (2004) 116 Cal.App.4th
28 339, *Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910, and *In re*

1 Rosenkrantz (2002) 29 Cal.4th 616.) To the extent that petitioner
 2 asks the court to apply a different standard, the court must
 3 follow the holdings of the Supreme Court and Courts of Appeal,
 4 which require application of the "some evidence" standard of
 5 review.

6 Here, the court finds that there was at least some
 7 evidence that releasing petitioner could pose an unreasonable risk
 8 to society or a threat to public safety, because of the violent
 9 nature of the original offense, and the escalating pattern of
 10 petitioner's criminal conduct before the murder, as well as his
 11 multiple disciplinary infractions during his incarceration.

12 According to the record, petitioner was convicted of
 13 second-degree murder and sentenced to 15 years to life, plus a
 14 two-year enhancement for use of a firearm. The Board of Parole
 15 Hearings granted petitioner's parole on June 8, 2006, after having
 16 previously denied him parole seven times. (Exhibit 1 to petition.)
 17 However, the Governor reversed the Board's decision on November 2,
 18 2006. (Exhibit 3 to petition.)

19 The Governor relied largely on the seriousness of the
 20 underlying offense. (Exhibit 3, p. 2.) The Governor noted that
 21 petitioner shot Sylvestre Bustos to death while attempting to
 22 purchase heroin. (*Id.* at p. 1.) Petitioner went to Bustos' home
 23 to buy heroin. (*Ibid.*) Petitioner spoke to Bustos' roommate,
 24 Enrique Casias, through the window. (*Ibid.*) Casias agreed to
 25 sell Bustos heroin for \$20. (*Ibid.*) Petitioner paid the money
 26 and Casias went to retrieve the heroin from Bustos' boots.
 27 (*Ibid.*) Bustos was asleep on the couch with a gun tucked in his
 28 waistband. (*Ibid.*) When Casias went to get the heroin, petitioner

1 forced his way into the house armed with a sawed-off shotgun.
 2 (*Ibid.*) He demanded Bustos' gun and the heroin. (*Ibid.*) When
 3 Bustos rose from the couch, petitioner shot him one time from a
 4 distance of about seven or eight feet. (*Ibid.*) He then took
 5 Bustos' gun and fled the scene. (*Ibid.*)

6 The facts cited by the Governor tend to support the
 7 conclusion that the murder was committed in a callous manner. The
 8 petitioner shot Bustos at close range with a sawed-off shotgun
 9 shortly after Bustos had woken up. There was some evidence of
 10 premeditation, since petitioner went to Bustos' home armed with a
 11 shotgun. Although petitioner claims that he shot Bustos in self-
 12 defense, two witnesses testified that they heard only one shot.
 13 (Governor's review, p. 2.) There was also evidence that the
 14 petitioner created the dangerous situation by forcing his way into
 15 Bustos' residence with a shotgun. (*Ibid.*) Therefore, the
 16 Governor's skepticism about petitioner's expressed remorse and
 17 acceptance of responsibility has at least some basis in fact.

18 In addition, the Governor noted that during his
 19 incarceration, petitioner was disciplined seven times for rules
 20 violations involving grooming standards, possession of inmate
 21 manufactured alcohol, possession of a utility knife blade,
 22 stealing food, improperly loaning personal property, and
 23 disrespecting staff. (*Id.* at p. 1.) He was also counseled 12
 24 times for minor violations, most recently in 2000. (*Ibid.*) Thus,
 25 petitioner's conduct while incarcerated was not discipline-free,
 26 which tends to support the Governor's conclusion that petitioner
 27 could still be a risk to public safety if released.

28 In addition, the Governor observed that petitioner had

1 an extensive criminal record before he committed the murder,
2 including juvenile adjudications for armed robbery, assault with a
3 deadly weapon, burglary, petty theft, carrying a concealed
4 firearm, joyriding, and resisting an officer. (*Ibid.*) He also had
5 convictions as an adult for discharging a firearm at an occupied
6 dwelling or vehicle, harboring a federal fugitive, being under the
7 influence of a controlled substance, and driving under the
8 influence of a controlled substance. (*Ibid.*) He also admitted to
9 using heroin, cocaine, LSD, marijuana, and PCP. (*Ibid.*) Thus,
10 the Governor believed that petitioner's criminal history prior to
11 the life offense weighed against his parole suitability. (*Ibid.*)

12 Under the circumstances, there was at least some
13 evidence that petitioner might still pose a risk if released,
14 based on the petitioner's criminal history, as well as the
15 seriousness of the life offense itself and the petitioner's
16 multiple disciplinary infractions while incarcerated.
17 Consequently, the court cannot overturn the Governor's decision.

18 The petition is denied.

19 DATED this 11th day of January, 2007:

20 GARY S. AUSTIN

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22 GARY D. HOFF *Austin*
Judge of the Superior Court

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